

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Insurance
State of Louisiana
Baton Rouge, Louisiana

December 18, 2002



Financial and Compliance Audit Division

***Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor***

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LEGISLATIVE AUDITOR

Daniel G. Kyle, Ph.D., CPA, CFE

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DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Baton Rouge, Louisiana

Special Purpose Financial Statements
and Independent Auditor's Reports
As of and for the Year Ended June 30, 2002
With Supplemental Information Schedules

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor.

December 18, 2002

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Special Purpose Financial Statements
and Independent Auditor's Reports
As of and for the Year Ended June 30, 2002
With Supplemental Information Schedules

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DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Contents, June 30, 2002

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Financial Reporting Based on an Audit of the Special Purpose
Financial Statements

A

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to the Findings and Recommendations

A



DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

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December 11, 2002

Independent Auditor's Report
on the Financial Statements

J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Baton Rouge, Louisiana

We have audited the accompanying special purpose (legal basis) financial statements of the Department of Insurance, a department within Louisiana state government, as of and for the year ended June 30, 2002, as listed in the table of contents. These financial statements are the responsibility of management of the Department of Insurance. Our responsibility is to express an opinion on these financial statements based on our audit.

Except as discussed in the fourth and fifth paragraphs, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in note 1 to the financial statements, the accompanying special purpose financial statements present only the funds of the Department of Insurance. As such, they present the appropriated and non-appropriated activity of the department that are part of the accounts and fund structure of the State of Louisiana. The appropriated fund reflects appropriated activity of the department that is part of the General Fund of the State of Louisiana. The non-appropriated funds are individual funds of the State of Louisiana not subject to budgetary control. Furthermore, the special purpose financial statements have been prepared on a legal basis of accounting, the purpose of which is to reflect compliance with the annual appropriation act for the appropriated fund and the financial position of the non-appropriated funds. These procedures differ from accounting principles generally accepted in the United States of America as described in the notes to the financial statements. Accordingly, the accompanying special purpose financial statements do not purport to, and do not, present fairly the financial position and results of operations in conformity with accounting principles generally accepted in the United States of America.

LEGISLATIVE AUDITOR

J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Audit Report, June 30, 2002

The agency fund in the special purpose financial statements includes 35 insurance companies and seven subsidiaries or affiliated entities in the Office of Receivership for which the Department of Insurance has fiduciary responsibility. Because of the nature of these insurance companies and their subsidiaries and affiliates and the reasons they are in liquidation or rehabilitation, some of the assets and their valuation may not be known to the department. The ultimate value of these assets cannot presently be determined. Consequently, the actual liquidation value of the assets may differ from the amounts reported by the department. Accordingly, except as described in the following paragraph, the agency fund on Statement A and Schedules 1 and 2 contains only information that is known to the Department of Insurance as of June 30, 2002.

The Oath entered into court-ordered receivership on May 29, 2002. Since that date, the department has been reviewing The Oath's accounting records to quantify the assets and liabilities. In November 2002, the department estimated that The Oath's assets totaled \$23 million and the liabilities totaled \$54 million. However, because of the uncertain nature of the valuations, these amounts are not included on Statement A and Schedules 1 and 2.

In our opinion, except for the effects of such adjustments, if any, as might have been necessary had we been able to determine the extent and valuation of the assets mentioned previously, the accompanying special purpose financial statements present fairly, in all material respects, the balances within the appropriated and non-appropriated funds of the Department of Insurance at June 30, 2002, and the transactions of the General Appropriation Fund for the year then ended, on the basis of accounting described in note 1-B.

In accordance with *Government Auditing Standards*, we have also issued a report dated December 11, 2002, on our consideration of the Department of Insurance's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, and contracts. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Our audit was conducted for the purpose of forming an opinion on the accompanying special purpose financial statements of the Department of Insurance taken as a whole. The accompanying supplemental information schedules are presented for the purpose of additional analysis and have been subjected to the auditing procedures applied in the audit of the financial statements and, in our opinion, except for the effects of such adjustments, if any, as might have been necessary had we been able to determine the extent and valuation of the assets mentioned previously, are stated fairly in all material respects in relation to the financial statements taken as a whole.

LEGISLATIVE AUDITOR

J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Audit Report, June 30, 2002

This report is intended solely for the information and use of the Department of Insurance and its management and is not intended to be, and should not be, used by anyone other than these specified parties. Under Louisiana Revised Statute 24:513, this report is distributed by the Legislative Auditor as a public document.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Kyle". The signature is fluid and cursive, with the first name "Daniel" being the most prominent part.

Daniel G. Kyle, CPA, CFE
Legislative Auditor

SRT:EFS:RCL:ss

[DOI02]

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
ALL APPROPRIATED AND
NON-APPROPRIATED FUNDS**

Balance Sheet (Legal Basis), June 30, 2002

	APPROPRIATED FUND - GENERAL APPROPRIATION	NON-APPROPRIATED FUNDS		TOTAL (MEMORANDUM ONLY)
		MAJOR STATE REVENUES AND INCOME NOT AVAILABLE	AGENCY FUNDS	
ASSETS				
Cash and cash equivalents (note 1-C)	\$3,830,588		\$1,332,361	\$5,162,949
Investments (note 1-D)			65,226,428	65,226,428
Receivables (note 2)	465,115	\$25,497,789	290,283	26,253,187
Prepaid items	57,451			57,451
Other			20,776	20,776
TOTAL ASSETS	\$4,353,154	\$25,497,789	\$66,869,848	\$96,720,791
LIABILITIES AND FUND BALANCE				
Liabilities:				
Accounts payable	\$400,987		\$293,049	\$694,036
Payroll payable	257,877			257,877
Advance from state treasury (note 7)	35,000			35,000
Major state revenues and income not available due to state treasury		\$25,497,789		25,497,789
Due to state treasury (note 10)	3,858,275			3,858,275
Amounts held in custody for others			66,576,799	66,576,799
Total Liabilities	4,552,139	25,497,789	66,869,848	96,919,776
Fund Balance:				
Reserved (note 9)	57,451			57,451
Unreserved - undesignated (deficit) (note 8)	(256,436)			(256,436)
Total Fund Balance	(198,985)	NONE	NONE	(198,985)
TOTAL LIABILITIES AND FUND BALANCE	\$4,353,154	\$25,497,789	\$66,869,848	\$96,720,791

The accompanying notes are an integral part of this statement.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
GENERAL APPROPRIATION FUND**

**Statement of Revenues, Expenditures, and
Changes in Fund Balance (Legal Basis)
For the Year Ended June 30, 2002**

REVENUES

Appropriated by legislature - state General Fund	
by fees and self-generated revenues	\$25,517,454
Federal funds	199,176
Total revenues	<u>25,716,630</u>

EXPENDITURES

Administration/fiscal	3,597,097
Market compliance	16,474,553
Total expenditures	<u>20,071,650</u>

EXCESS OF REVENUES OVER EXPENDITURES	<u>5,644,980</u>
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OTHER APPROPRIATED FINANCING SOURCES (Uses)

Transfers in (note 10)	760,218
Transfers out (note 10)	(6,458,404)
Total other financing sources (uses)	<u>(5,698,186)</u>

EXCESS OF EXPENDITURES AND OTHER USES OVER REVENUES AND OTHER SOURCES	(53,206)
--	----------

FUND BALANCE (Deficit) AT BEGINNING OF YEAR	<u>(145,779)</u>
--	------------------

FUND BALANCE (Deficit) AT END OF YEAR	<u><u>(\$198,985)</u></u>
--	---------------------------

The accompanying notes are an integral part of this statement.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
GENERAL APPROPRIATION FUND**

**Statement of Revenues, Expenditures, and
Unexpended Appropriation - Budget
Comparison of Current-Year Appropriation -
Budget (Legal Basis) and Actual
For the Year Ended June 30, 2002**

	<u>BUDGET</u>	<u>ACTUAL</u>	<u>VARIANCE FAVORABLE (UNFAVORABLE)</u>
REVENUES			
Appropriated by legislature - state General Fund			
by fees and self-generated revenues	\$19,727,978	\$19,154,746	(\$573,232)
Federal funds	208,768	198,252	(10,516)
Statutory dedication	776,192	760,089	(16,103)
Total appropriated revenues	<u>20,712,938</u>	<u>20,113,087</u>	<u>(599,851)</u>
EXPENDITURES			
Appropriated for:			
Administration/fiscal	3,646,107	3,597,097	49,010
Market compliance	17,066,831	16,515,990	550,841
Total appropriated expenditures	<u>20,712,938</u>	<u>20,113,087</u>	<u>599,851</u>
UNEXPENDED APPROPRIATION - CURRENT YEAR	<u>NONE</u>	<u>NONE</u>	<u>NONE</u>

The accompanying notes are an integral part of this statement.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Notes to the Financial Statements
As of and for the Year Ended June 30, 2002

INTRODUCTION

The Louisiana Department of Insurance was created in accordance with Title 36, Chapter 17 of the Louisiana Revised Statutes of 1950, as a part of the executive branch of government. The department is required to adequately supervise and regulate insurance companies transacting business in the state to ensure competitive and available insurance that responsibly serves the insurance needs of Louisiana citizens. The department is operated under the direction of the commissioner of insurance who represents the public interest in the administration of the department and is responsible to the legislature and the public. The commissioner of insurance administers all parts of Title 22 of the Louisiana Revised Statutes (Insurance Code). The department is comprised of two programs and has 347 full- and part-time employees.

Even though the Department of Insurance has fiduciary responsibility over the Office of Receivership, the department has had no jurisdiction over this office since October 5, 1995. The Office of Receivership has operated under the control and administration of the Nineteenth Judicial District pursuant to an order signed by Judge A. Foster Sanders.

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Governmental Accounting Standards Board (GASB) promulgates accounting principles generally accepted in the United States of America and reporting standards for state and local governments. These principles are found in the *Codification of Governmental Accounting and Financial Reporting Standards*, published by the GASB. However, the accompanying special purpose financial statements have been prepared on a legal basis prescribed by the Division of Administration, Office of Statewide Reporting and Accounting Policy, which differs from accounting principles generally accepted in the United States of America as explained in the following notes.

The State of Louisiana has been determined to be the reporting entity under accounting principles generally accepted in the United States of America. The accompanying financial statements represent activity of a department of state government and, therefore, are a part of the fund structure of the State of Louisiana and its basic financial statements. Annually, the State of Louisiana issues basic financial statements that are audited by the Louisiana Legislative Auditor.

A. FUND ACCOUNTING

The department uses fund accounting, along appropriation lines, to reflect its compliance with provisions of the annual appropriation act and to reflect the financial position of its non-appropriated funds. This differs from the fund accounting of accounting principles generally accepted in the United States of America where the intent is to measure the financial position and results of operations of the governmental

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA

Notes to the Financial Statements (Continued)

reporting entity as a whole. Therefore, the funds within the accompanying financial statements have been divided between appropriated and non-appropriated funds and not by the conventional fund types of accounting principles generally accepted in the United States of America.

The funds do not include any noncurrent assets or liabilities. Noncurrent assets, capital assets, and long-term liabilities are reflected in the State of Louisiana's basic financial statements.

The funds presented in the special purpose financial statements are described as follows:

GENERAL APPROPRIATION FUND

The General Appropriation Fund is the general operating fund of the Department of Insurance. It administers and accounts for the legislative appropriation provided to fund the general administrative expenditures of the department and those expenditures not funded through other specific legislative appropriations or revenues.

NON-APPROPRIATED FUNDS

**Major State Revenues and
Income Not Available**

The department collects major state revenues that are remitted to the state treasury for deposit to statutorily dedicated funds. In addition, the department collects funds specifically identified by the Division of Administration, Office of Planning and Budget, as income not available that are remitted to the state treasury. These amounts are not available to the department for expenditure and, therefore, are not included on Statement B but are detailed on Schedule 3.

Agency Fund

The agency fund includes the accounts for funds received from certain insurance companies and their subsidiaries and affiliates placed in rehabilitation or liquidation under the supervision of the court, as provided by Louisiana Revised Statutes (R.S.) 22:731-764. Disbursements from the fund are made by order of the court. These funds represent cash, cash equivalents, and investments, which primarily consist of investments in mutual funds, bonds, United States government securities, mortgage and promissory notes receivable, and real estate held for resale. Accounts receivable are short-term receivables collected within 45 days. In addition, the agency fund includes dividends in the possession of the commissioner of insurance remaining unclaimed or unpaid for six months after the final order of distribution, as provided by R.S. 22:755(H).

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Notes to the Financial Statements (Continued)

The non-appropriated funds are custodial in nature (assets equal liabilities) and do not involve measurement of results of operations.

B. BASIS OF ACCOUNTING

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. The funds in the accompanying financial statements measure the resources provided by the legislature to fund current-year expenditures and the use of those resources by the department.

Basis of accounting refers to when revenues and expenditures are recognized and reported in the financial statements, regardless of the measurement focus applied. The accompanying financial statements reflect revenues and expenditures in accordance with applicable statutory provisions and regulations of the Division of Administration, Office of Statewide Reporting and Accounting Policy.

Under the foregoing legal provisions, the department uses the following practices in recognizing revenues and expenditures:

Revenues

The state General Fund fees and self-generated revenues and non-appropriated revenues are recognized in the amounts earned, to the extent that they will be collected within 45 days of the close of the fiscal year. Federal funds are recognized as revenue in the period in which they become susceptible to accrual or when the related expenditure is incurred in accordance with the *Codification of Governmental Accounting and Financial Reporting Standards* Section G60.109.

Expenditures

Expenditures are generally recognized under the modified accrual basis of accounting when the related fund liability is incurred, except that obligations of employees' vested annual and sick leave are recognized as expenditures when paid. Furthermore, any expenditures of a long-term nature for which funds have not been appropriated during the current year are not recognized in the accompanying financial statements.

Other Appropriated Financing Sources and Uses

Transfers made to or received from the state treasury or any other agency are recognized in the year the transfers are authorized, in accordance with provisions of the Division of Administration, Office of Statewide Reporting and Accounting Policy.

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Notes to the Financial Statements (Continued)

C. CASH

Cash is composed of the following (book balances):

Cash in demand deposits	\$760,306
Cash on deposit with the state treasury	4,401,843
Petty cash	<u>800</u>
Total	<u><u>\$5,162,949</u></u>

Under state law, these deposits (or the resulting bank balances) must be secured by federal deposit insurance or the pledge of securities owned by the fiscal agent bank. The market value of the pledged securities plus the federal deposit insurance must at all times equal the amount on deposit with the agent bank. The department has deposit balances (collected bank balances) of \$1,628,476 at June 30, 2002, for which the department has control. These deposits are secured from risk by \$1,049,922 of federal deposit insurance and \$578,554 of pledged securities held by the department's agent in the department's name (GASB Risk Category 1).

Cash balances held and controlled by the state treasurer are secured from risk by the state treasurer through separate custodial agreements, and the risk disclosures required by accounting principles generally accepted in the United States of America are included within the state's basic financial statements. The following is a summary of cash in the state treasury:

Means of finance	\$3,509,589
ISIS operating	286,198
Escrow funds	<u>606,056</u>
Total	<u><u>\$4,401,843</u></u>

D. INVESTMENTS

R.S. 22:739.1 authorizes the commissioner of insurance to invest monies held in any rehabilitation, liquidation, conservation, dissolution, and administrative supervision proceeding. Authorized investments include investments in or loans on United States or state general government obligations; bonds or notes secured by a mortgage or trust deed issued, assumed, guaranteed, or insured by the United States or an agency of the United States; conventional first mortgage loans capable of being securitized into guaranteed Federal National Mortgage Association mortgage backed securities; bonds issued by the Inter-American Development Bank or the African Development Bank; and first mortgage loans guaranteed by the administrator of veteran affairs.

DEPARTMENT OF INSURANCE**STATE OF LOUISIANA**

Notes to the Financial Statements (Continued)

At June 30, 2002, the department has the following investments totaling \$65,226,428. All of these investments are for the Office of Receivership from companies in rehabilitation, liquidation, conservation, et cetera, as reported in Schedule 1, and are valued at current market value.

	<u>GASB Category of Risk</u>	<u>Carrying Amount</u>
Categorized:		
Repurchase agreements	1	\$898,123
U.S. government securities	3	2,187,747
Repurchase agreements	3	5,446,321
Investments not categorized:		
Mutual fund		55,917,043
Notes receivable		109,982
Corporate bonds		422,407
Preferred/common stock		2,451
Real estate		30,250
Furniture and fixtures		184,321
Other		<u>27,783</u>
Total investments		<u><u>\$65,226,428</u></u>

As defined by GASB Statement 3, Category 1 includes investments insured or collateralized with securities held by the department or by the department's agent in the department's name. Category 3 includes investments unsecured and unregistered with securities held by the counterparty or by its trust department or agent but not in the department's name.

E. PREPAID ITEMS

The department establishes prepaid expenditures for postage. Payments made for such items that will benefit periods beyond June 30, 2002, are recorded as prepaid items.

F. OPERATING AND CAPITAL GRANTS

Operating grants represent the total amount of the grant revenue for the year that are restricted by the grantor for operating purposes or that may be used for either capital or operating purposes at the discretion of the grantee. Capital grants represent the total amount of the revenues for the year from grants restricted by the grantor for the acquisition, construction, or renovation of capital assets.

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA

Notes to the Financial Statements (Continued)

For fiscal year ended June 30, 2002, the total operating grants and contributions were \$199,176. The department had no capital grants and contributions.

G. LONG-TERM OBLIGATIONS

The department is by statute not allowed to incur bonded indebtedness and, therefore, no recognition within the accompanying financial statements is necessary. Furthermore, any long-term obligations of the department arising from lease commitments, judgments, compensated absences, or from any other source are not recognized in the accompanying special purpose financial statements.

H. BUDGET PRACTICES

The appropriations made for the general operations of the department are annual lapsing appropriations and are recorded in the General Appropriation Fund.

1. The budget process for the General Appropriation Fund is an annual appropriation valid for one year. Revenues and expenditures for budget purposes are recognized on the same basis of accounting as described in note 1-B, except that federal receivables attributable to the payroll accrual at fiscal year-end and transfers out relating to statutory dedications are not recognized on Statement C. Also included in revenues on Statement C are transfers in relating to statutory dedications. In addition, salaries and related benefits are recognized when paid on Statement C. The revenues and expenditures shown on Statement B are reconciled with the respective amounts shown on Statement C as follows:

Statement B revenues	\$25,716,630
Transfer in (statutory dedications)	760,218
Transfer out (return of appropriation)	(6,458,404)
Federal payroll receivable (net)	(924)
Prior-year carryover	<u>95,567</u>
Statement C revenues	<u><u>\$20,113,087</u></u>
Statement B expenditures	\$20,071,650
Prior-year payroll payable	244,078
Prepaid Postage	57,451
Current-year payroll payable	<u>(260,092)</u>
Statement C expenditures	<u><u>\$20,113,087</u></u>

DEPARTMENT OF INSURANCE**STATE OF LOUISIANA**

Notes to the Financial Statements (Continued)

2. The department is prohibited by statute from over-expending the programs established in the General Appropriations Act.

3. Budget revisions are granted by the Joint Legislative Committee on the Budget. Interim emergency appropriations may be granted by the Interim Emergency Board. The budget information included in the financial statements includes the original appropriations plus subsequent amendments as follows:

Original approved budget	\$20,632,638
Amendments:	
Fees and self-generated revenues	43,410
Statutory dedications - administration	30,000
Federal funds - market compliance	<u>6,890</u>
Total	<u><u>\$20,712,938</u></u>

4. The non-appropriated funds are not subject to budgetary control.

I. LEAVE BENEFITS

Employees earn and accumulate annual and sick leave at various rates, depending on their years of service, without limitation on the balance that can be accumulated. Upon termination, employees or their heirs are compensated for up to 300 hours of unused annual leave at the employee's hourly rate of pay at the time of termination but are not compensated for unused sick leave. Upon retirement, unused annual leave in excess of 300 hours plus unused sick leave are used to compute retirement benefits. The liability for unused annual leave payable at June 30, 2002, computed in accordance with the *Codification of Governmental Accounting and Financial Reporting Standards* Section C60.104, is estimated to be \$1,054,659 for the General Appropriation Fund. The leave payable is not accrued (reflected) in the accompanying special purpose financial statements.

Certain employees of the department are eligible to earn compensatory time as defined by the Department of State Civil Service and the Fair Labor Standards Act. These employees can earn and accumulate one hour or one and one-half hours for each hour of overtime worked, depending on their position and rate of pay. Generally, the employees are allowed to carry up to 360 hours of accrued compensatory leave from one calendar year to another. The liability for accrued compensatory leave at June 30, 2002, computed in accordance with the *Codification of Governmental Accounting and Financial Reporting Standards* Section C60.104, is estimated to be \$8,998 for the General Appropriation Fund. Accumulated compensatory leave is not accrued (reflected) in the accompanying special purpose financial statements.

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Notes to the Financial Statements (Continued)

J. TOTAL COLUMN ON BALANCE SHEET

The total column on the balance sheet is captioned Memorandum Only (overview) to indicate that it is presented only to facilitate financial analysis. Data in this column does not present financial position or results of operations. Neither is such data comparable to a consolidation.

2. RECEIVABLES

The following schedule presents the adjustments necessary to convert modified accrual basis accounts receivable, as shown in Statement A and the schedules, to full accrual basis accounts receivable as required by the Office of Statewide Reporting and Accounting Policy.

	Accounts Receivable - Modified Accrual Basis	Full Accrual Adjustment	Allowance for Doubtful Accounts	Accounts Receivable - Full Accrual Basis
Appropriated Revenues:				
Fees and self-generated	\$153,567	\$52,111	\$28,495	\$177,183
Other	296,681			296,681
Federal funds	14,867			14,867
Total appropriated revenues	<u>\$465,115</u>	<u>\$52,111</u>	<u>\$28,495</u>	<u>\$488,731</u>
Non-Appropriated Revenues:				
Major state revenues	\$25,497,789	\$1,666,278	\$200,129	\$26,963,938
Agency funds	290,283	8,160,939	3,264,375	5,186,847
Total non-appropriated revenues	<u>\$25,788,072</u>	<u>\$9,827,217</u>	<u>\$3,464,504</u>	<u>\$32,150,785</u>

3. PENSION PLAN

Substantially all employees of the department are members of the Louisiana State Employees Retirement System, a cost-sharing, multiple-employer defined benefit pension plan, administered by a board of trustees. Certain other employees of the department are members of the Louisiana Teachers Retirement System, a multiple-employer, defined benefit pension plan. Required disclosures for the plans for fiscal year 2002 are included in the Louisiana Comprehensive Annual Financial Report prepared by the Louisiana Division of Administration, Post Office Box 94095, Baton Rouge, Louisiana 70804-9095.

**4. POSTRETIREMENT HEALTH CARE
AND LIFE INSURANCE BENEFITS**

The department provides certain continuing health care and life insurance benefits for its retired employees. Substantially all of the department's employees become eligible for these benefits if they reach normal retirement age while working for the department. These benefits for

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Notes to the Financial Statements (Continued)

retirees and similar benefits for active employees are provided through the state's Group Benefits self-insurance program or one of the HMOs authorized by the program. Monthly premiums are paid jointly by the employee and the department. The department's costs of providing retiree health care and life insurance benefits are recognized as expenditures when the monthly premiums are paid. For the year ended June 30, 2002, the cost of retiree benefits totaled \$349,636 for 120 retirees. The cost of retirees' benefits is net of participants' contributions.

**5. JUDGMENTS, CLAIMS, AND
SIMILAR CONTINGENCIES**

Obligations and losses arising from judgments, claims, and similar contingencies are paid through the state's self-insurance fund or by General Fund appropriation and are not reflected in the accompanying special purpose financial statements. The self-insurance fund is operated by the Office of Risk Management, the state agency responsible for the state's self-insurance program.

6. LEASE OBLIGATIONS

The department has no capital leases but does have operating leases for office space and equipment. The annual rental payments are as follows:

<u>Fiscal Year</u>	<u>Office Space</u>	<u>Equipment</u>	<u>Total</u>
2002-2003	\$82,878	\$107,059	\$189,937
2003-2004	27,401		27,401
2004-2005	1,619		1,619
Total	<u>\$111,898</u>	<u>\$107,059</u>	<u>\$218,957</u>

All lease agreements have non-appropriation exculpatory clauses that allow for lease cancellation if the legislature does not make an appropriation for its continuation during any future fiscal period. Total operating lease expenditures for fiscal year 2001-2002 amounted to \$525,747.

7. ADVANCE FROM STATE TREASURY

The department received an advance from the state treasury for imprest fund operations totaling \$35,000. The advance, as reflected in Statement A, represents a liability.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Notes to the Financial Statements (Continued)

**8. FUND BALANCE - UNRESERVED -
UNDESIGNATED (DEFICIT)**

The General Appropriation Fund had an unreserved - undesignated fund deficit of (\$256,436) for the year ended June 30, 2002. The deficit was the result of the recognition of accrued salaries and related benefits as required by the Office of the Governor, Division of Administration, and the fact that revenues to fund those accruals are appropriated in the subsequent year. The deficit will be resolved by paying for salaries and related benefits from fiscal year 2003 funds appropriated to pay those obligations of the 2001-2002 fiscal year.

9. FUND BALANCE - RESERVED

The amount of \$57,451, shown as reserved fund balance on Statement A, represents prepaid expenditures for the 2002-2003 fiscal year.

**10. OTHER APPROPRIATED FINANCING
SOURCES AND USES**

As shown on Statement B, in accordance with provisions of the Division of Administration, Office of Statewide Reporting and Accounting Policy, other appropriated financing sources (transfers in) totaled \$760,218 while uses (transfers out) totaled \$6,458,404 for the year ended June 30, 2002. The transfers in consist totally of statutory dedicated funds used for current year operations. The transfers out consist of \$3,858,275 in self-generated funds collected but not spent, which are due to the State Treasurer's Office at June 30, 2002; \$2,600,000 in self-generated funds transferred to the Office of Facility Planning and Control for the newly constructed Poydras Building; and \$129 for an error correction.

11. DEFERRED COMPENSATION PLAN

Certain employees of the department participate in the Louisiana Public Employees Deferred Compensation Plan adopted under the provisions of Internal Revenue Code Section 457. Complete disclosures relating to the Plan are included in the separately issued audit report for the Plan, available from the Louisiana Legislative Auditor, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397.

12. RELATED PARTY TRANSACTIONS

Related party transactions, as defined by Financial Accounting Standards Board Statement Number 57, occur in the normal course of business between the 35 insurance companies and their seven subsidiaries or affiliates for which the department has fiduciary responsibility. Also, transactions to pay the administrative costs, settlements, et cetera, of these insurance estates all flow through the Office of Receivership bank account. These transactions are included in the additions and deletions reported on Schedule 1.

DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Notes to the Financial Statements (Concluded)

13. SUBSEQUENT EVENTS

AmCare Health Plans of Louisiana, Inc., entered into court-ordered rehabilitation on September 27, 2002.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
SUPPLEMENTAL INFORMATION SCHEDULES
For the Year Ended June 30, 2002**

SCHEDULE OF CHANGES IN BALANCES

Changes in balances for the non-appropriated funds for the year ended June 30, 2002, presented on Schedule 1, include 35 insurance companies and seven subsidiaries or affiliated entities that are custodial in nature and are administered in-house by the Office of Receivership. The department prepared the financial statements in accordance with requirements of the Louisiana Office of Statewide Reporting and Accounting Policy. Schedule 1 reflects only those assets that comply with those requirements. In addition, the Office of Receivership has other assets (noncurrent) totaling \$8,160,939, which are not included in Schedule 1.

SCHEDULE OF ENDING BALANCES

The balances of assets for the non-appropriated funds, including balances by individual insurance companies and their subsidiaries and affiliates, are presented on Schedule 2.

**SCHEDULE OF NON-APPROPRIATED REVENUES -
MAJOR STATE REVENUES AND INCOME NOT AVAILABLE**

Schedule 3 reflects major state revenues and income not available collected by the department during the year that were not available to the department for expenditure.

SCHEDULE OF PER DIEM PAID COMMISSION MEMBERS

The per diem paid Insurance Rating Commission members is presented on Schedule 4, as required by House Concurrent Resolution No. 54 of the 1979 Session of the Louisiana Legislature. In accordance with R.S. 22:1401, each member is paid \$50 for each day devoted to work of the commission.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
NON-APPROPRIATED - AGENCY FUNDS**

**Schedule of Changes in Balances
For the Year Ended June 30, 2002**

	BALANCE JUNE 30, 2001	ADDITIONS	DELETIONS	BALANCE JUNE 30, 2002
ASSETS				
Cash and cash equivalents	\$2,452,163	\$30,906,935	\$32,026,737	\$1,332,361
Investments	57,961,432	30,480,189	23,215,193	65,226,428
Accounts receivable	266,517	290,283	266,517	290,283
Other	762,395	366,948	1,108,567	20,776
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL ASSETS	<u>\$61,442,507</u>	<u>\$62,044,355</u>	<u>\$56,617,014</u>	<u>\$66,869,848</u>
LIABILITIES				
Accounts payable	\$316,493	\$293,049	\$316,493	\$293,049
Amounts held in custody for others	61,126,014	61,751,306	56,300,521	66,576,799
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL LIABILITIES	<u>\$61,442,507</u>	<u>\$62,044,355</u>	<u>\$56,617,014</u>	<u>\$66,869,848</u>

The above balances do not include The Oath, which entered into court-ordered receivership on May 29, 2002.

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
NON-APPROPRIATED - AGENCY FUNDS**

**Schedule of Ending Balances
For the Year Ended June 30, 2002**

Escrow Funds

Anglo American Insurance Company	\$52
Continental Service Life	1,352
Fidelity Fire and Casualty Company	2,560
Fidelity Life Insurance Company	39,909
First American Life Insurance	192,687
First Fidelity Life Insurance Company	19,242
Galaxia Life Insurance Company	68,857
Golden State	12,714
Liberty Underwriters Management	86
Louisiana Independent Life	7,612
Mid-American Assurance	37,465
Mid-American Casualty	98,915
New England International Surety of America	16,739
Savings Life Insurance Company	28,174
Summit Life Insurance	64,407
Sunbelt Life Insurance	3,086
World Health Foundation	12,199
Total	<u>606,056</u>

Insurance Trust Funds

Alliance Casualty and Reinsurance Company	2,660,065
American Funding Service	911,615
ANA Insurance Group	4,053,268
Automotive Casualty Insurance Company	53,704
Automotive Financial Services, Incorporated	1,141,570
Blooming Insurance Company	27,799
Car Insurance Company	8,601,163
Cascade Insurance Company	1,504,619
Colonial Lloyd's	187,605
First Columbia Life Insurance Company	21,009
Gulf Coast Casualty	562,132
Gulf South Health Plan	4,799,792
Independence Life Insurance Company	117,276
Liberty Lloyd's, Incorporated	25,733
Lloyd's Assurance of Louisiana	15,732,044
Louisiana Receivership Office Fiduciary Trust Account	950,500
Midwest Life Insurance Company	5,162,213

(Continued)

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
NON-APPROPRIATED - AGENCY FUNDS
Schedule of Ending Balances, 2002**

Insurance Trust Funds (Cont.)

National Affiliated Investors Life	\$1,206,798
North American Indemnity Company	4,785,017
Patient's Choice, Incorporated	241,535
Physicians National Risk Retention Group	3,081,955
Public Investors Life Insurance Company	2,172,716
Savant Insurance Company	558,899
Savant Insurance Services	300,650
Superior Life Insurance Company	201,314
United Agents Holding	34,031
United Agents Insurance Company	2,484,702
United Agents Underwriters, Inc.	60,325
United States General Agency	4,623,743
Total Insurance Trust Funds	<u>66,263,792</u>
 Total Agency Funds	 <u><u>\$66,869,848</u></u>

(Concluded)

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
MAJOR STATE REVENUES AND
INCOME NOT AVAILABLE**

**Schedule of Non-Appropriated Revenues
For the Year Ended June 30, 2002**

<u>NON-APPROPRIATED REVENUE FUND SOURCE</u>	<u>CASH RECEIPTS THROUGH JUNE 30, 2002</u>	<u>ACCOUNTS RECEIVABLE JUNE 30, 2002</u>	<u>TOTAL REVENUES</u>
Income not available	<u>\$19,216</u>	<u>NONE</u>	<u>\$19,216</u>
Major state revenues:			
Taxes	122,784,672	24,997,902	147,782,574
Statutory dedicated - Health Insurance Portability Act	37,749	499,887	537,636
Statutory dedicated - Insurance Fraud Assessment Act	2,303,046		2,303,046
Assessments - municipal fire and police civil service	1,059,251		1,059,251
Retirement insurance proceeds	<u>31,285,883</u>		<u>31,285,883</u>
Subtotal - major state revenues	<u>157,470,601</u>	<u>25,497,789</u>	<u>182,968,390</u>
Total non-appropriated revenues	<u><u>\$157,489,817</u></u>	<u><u>\$25,497,789</u></u>	<u><u>\$182,987,606</u></u>

**DEPARTMENT OF INSURANCE
STATE OF LOUISIANA****Schedule of Per Diem Paid Commission Members
For the Year Ended June 30, 2002**

	<u>NUMBER</u>	<u>AMOUNT</u>
David Chozen	54	\$2,700
Robert L. Clayton	8	400
Michael D. Franks	193	9,650
Seth Keener	12	600
Elizabeth McKee	116	5,800
Steven Ruiz	85	<u>4,250</u>
Total		<u><u>\$23,400</u></u>

OTHER REPORT REQUIRED BY
GOVERNMENT AUDITING STANDARDS

The following pages contain a report on compliance with laws and regulations and on internal control over financial reporting as required by *Government Auditing Standards*, issued by the Comptroller General of the United States. This report is based solely on the audit of the financial statements and includes, where appropriate, any reportable conditions and/or material weaknesses in internal control or compliance matters that would be material to the presented financial statements.



DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

1600 NORTH THIRD STREET
POST OFFICE BOX 94397
TELEPHONE: (225) 339-3800
FACSIMILE: (225) 339-3870

December 11, 2002

Report on Compliance and on Internal Control
Over Financial Reporting Based on an Audit of the
Special Purpose Financial Statements

J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA
Baton Rouge, Louisiana

We have audited the special purpose (legal basis) financial statements of the Department of Insurance, a department within Louisiana state government, as of and for the year ended June 30, 2002, and have issued our report thereon dated December 11, 2002. The scope of our audit was limited in that we were unable to determine the existence or valuation of assets that may be held by insurance companies and their subsidiaries and affiliates. This resulted in a qualified opinion on the special purpose financial statements. Except for this scope limitation, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether the Department of Insurance's special purpose financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and, accordingly, we do not express such an opinion. The results of our tests disclosed the following instances of noncompliance that, although not material to the financial statements, are required to be reported herein under *Government Auditing Standards*.

**Unauthorized Services Provided
to Suspended Commissioner**

For the second consecutive year, the Department of Insurance and the Louisiana Receivership Office (LRO) may have violated statutory authority by providing services to James H. Brown after he was suspended from office as Louisiana Insurance Commissioner upon conviction of federal charges on October 11, 2000. According to Louisiana Revised Statute (R.S.) 42:1411, a suspended public official shall not receive any compensation, pay, allowance, emolument, or privilege of his office. In addition, by providing services to the suspended commissioner, the department and LRO may have

LEGISLATIVE AUDITOR

**J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Compliance and Internal Control Report

December 11, 2002

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violated Article VII, Section 14(A) of the Louisiana Constitution, which prohibits the donation or expenditure of the state's funds for any purpose for which there is no legal obligation of the state or no public purpose or benefit.

LRO paid contract attorneys nearly \$2,600 in legal fees pertaining to a petition to quash the deposition of Mr. Brown that was scheduled on July 9, 2001. A prior year audit finding noted that the state was under no legal obligation to represent Mr. Brown, so any payment of services would be considered a violation of Article VII, Section 14 of the Louisiana Constitution. Department of Insurance management disagreed, indicating that the finding was based on an erroneous interpretation of R.S. 42:1411.

The department may have also violated statutory authority by allowing Mr. Brown, a convicted felon, to use Department of Insurance facilities to hold at least two press conferences after his suspension. Furthermore, departmental employees assisted in setting up the room for the press conferences. The department could have exposed the state to potential liability by not requiring proof of insurance from Mr. Brown for the press conferences and should have considered an appropriate charge for use of the facilities since Mr. Brown was conducting personal business on state property.

The department should ensure that neither the Department of Insurance nor the LRO provide services on Mr. Brown's behalf, either directly or indirectly, during his suspension from office. Management did not concur with the finding noting that the department had addressed the legal services issue in the prior year's audit report and has since received corroboration from the Attorney General. In addition, management noted that the press conferences were held at the Department of Insurance because of the impact of the issue on the department and the insurance industry and no law or policy exists that prohibits a member of the public from using a state owned building (see Appendix A, pages 1-9).

Additional Comments: The department's request letter to the Attorney General did not accurately represent the position of the Office of the Legislative Auditor. Therefore, the response, which was not an opinion, does not change the position of this office. R.S. 42.1411 or R.S. 13:3667.3 does not give legal authority for the Department of Insurance employees to assert the rights of a private citizen to the court.

Article VII, Section 14 of the Louisiana Constitution prohibits the donation of state property, which includes allowing members of the public to use state buildings. We are also concerned that J. Robert Wooley, Acting Commissioner of Insurance, indicates in his response that the department is not aware of any law or policy stating that prior

LEGISLATIVE AUDITOR

**J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Compliance and Internal Control Report

December 11, 2002

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approval must be received for a member of the public to use a state owned building. Obviously, the department is not familiar with provisions of the state constitution.

Improper Contracting With Former Employees

The Department of Insurance may have violated R.S. 42:1121(B) by allowing a contractor to employ two former department employees within two years of their termination dates with the department. R.S. 42:1121(B) states that "No former public employee shall, for a period of two years following the termination of his public employment, assist another person, for compensation, in a transaction, or in an appearance in connection with a transaction in which such former public employee participated at any time during his public employment and involving the governmental entity by which he was formerly employed, or for a period of two years following termination of his public employment, render, on a contractual basis to or for the agency with which he was formerly employed, any service which such former public employee had rendered to the agency during the term of his public employment."

Audit procedures determined that a department contractor (Jet-Net, Inc.) employs two former employees to perform services that are very similar to their former departmental job duties. Jet-Net, Inc., has a contract to perform maintenance of Internet, Intranet, Firewall and Virtual Private Network Hardware and Software. During the employees' tenure with the department, their primary job duties were related to the department's Intranet and Internet web pages. Since the duties are similar, this employment may be in violation of state regulations.

Management should formally address this issue with the Louisiana State Board of Ethics and take the necessary measures to ensure departmental personnel and contractors comply with state regulations regarding employment of former employees. Management concurred with the finding and recommendation and outlined a plan of corrective action (see Appendix A, page 10).

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Department of Insurance's internal control over financial reporting to determine our auditing procedures for the purpose of expressing our opinion on the special purpose financial statements and not to provide assurance on the internal control over financial reporting. However, we noted matters relating to unauthorized services provided to the suspended commissioner and improper contracting with former employees as mentioned in the compliance section of this report that we consider to be reportable conditions. In addition, we noted certain matters involving the internal control

LEGISLATIVE AUDITOR

**J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Compliance and Internal Control Report

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over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the Department of Insurance's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions are described in the following paragraphs:

Lack of Control Over Payroll Records

For the second consecutive year, the Department of Insurance did not maintain adequate controls over payroll records. Good internal control includes an adequate review function to ensure that data are accurate and reliable and that errors and/or fraud are detected timely. Civil Service Rule 15.2 requires that the appointing authority or his agent certify on each payroll subsidiary document that services have actually been rendered, the actual number of hours of attendance on duty, and the number of hours of absence from duty. The department's internal policy Memorandum 53 requires that fixed time entry sheets be signed/approved by the employee's designated supervisor, assistant commissioner (or equivalent), or deputy commissioner.

A review of all departmental time and attendance records (350 employees) for the pay period ended June 9, 2002, revealed that 45 (13%) employee records were not approved by the designated supervisor, assistant commissioner (or equivalent), or deputy commissioner.

Noncompliance with Civil Service and departmental policies increases the risk that errors and/or fraud could be committed and not detected in a timely manner. This risk was substantiated in an investigative audit report issued by the legislative auditor on September 18, 2002, that found four departmental employees did not work all hours reported on their time and attendance records. (A similar report on payroll fraud was also issued on February 21, 2001.) The report recommended that the department implement policies and procedures to ensure that employees include only accurate information on their time sheets and instruct supervisors as to their responsibility to ensure that time sheets are properly prepared and accurate.

Management should re-emphasize the importance of payroll policies and procedures to ensure that supervisors approve employees' fixed time entry sheets. Management should then follow up to determine whether employees are complying and consider disciplinary action against those employees that do not comply. Management concurred with the finding and recommendations and outlined a plan of corrective action (see Appendix A, page 11).

**J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Compliance and Internal Control Report

December 11, 2002

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Insufficient Information Technology Policies

The Department of Insurance does not have sufficient information technology policies to properly safeguard its electronic records and equipment. Good internal control requires that the department develop a written disaster recovery/contingency plan and obtain access to an offsite disaster recovery facility to provide for the timely restoration of critical department operations in the event that normal data processing facilities are unavailable for an extended period of time. In addition, R.S. 44:36 requires that public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made.

A review of the department's information technology policies disclosed the following:

- The department does not have a sufficient written disaster recovery/business continuity plan. The current disaster plan was written over six years ago and does not reflect the current conditions of the department's system. The plan only addresses backup procedures.
- Backup tapes are not maintained at an acceptable offsite location. Backup tapes are being held at the department's Office of Health location that is across the street from the department's building. Because of the proximity, this location is not an appropriate facility to store backup tapes.
- The department does not have adequate procedures to ensure that e-mail is maintained on system backup files for a period compliant with the public records law. The department routinely purges e-mail that is older than 90 days, and only the department's annual backups are maintained for three years. Hence, only e-mails created within 90 days of the annual backup date would be retained for three years.

Without an adequate plan that has been tested and includes provisions for an offsite disaster recovery facility, the department may not be prepared to continue business operations in the event of a disaster. In addition, the department has not given adequate consideration to developing policies to ensure compliance with the public records law for its e-mail.

The department should (1) prepare a written disaster recovery/business continuity plan; (2) allocate current funds or request additional funds be appropriated to contract for an offsite disaster recovery facility; (3) test the plan periodically and update it as necessary to ensure that it continues to meet the department's needs; and (4) develop a policy for

LEGISLATIVE AUDITOR

**J. ROBERT WOOLEY
ACTING COMMISSIONER OF INSURANCE
DEPARTMENT OF INSURANCE
STATE OF LOUISIANA**

Compliance and Internal Control Report

December 11, 2002

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e-mail maintenance to comply with the public records law. Management concurred in part with the finding and provided a corrective action plan regarding a disaster recovery plan, but noted that it is the employee's responsibility to determine which e-mails should be retained (see Appendix A, page 12).

Additional Comments: R.S. 44:36 requires both employees and public bodies (Department of Insurance) to exercise diligence and due care in preserving public record. Management's responsibility includes establishing controls to ensure that departmental employees follow state regulations.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe that none of the reportable conditions described previously are material weaknesses.

This report is intended for the information and use of the department and its management and is not intended to be, and should not be, used by anyone other than these specified parties. Under Louisiana Revised Statute 24:513, this report is distributed by the Legislative Auditor as a public document.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Kyle".

Daniel G. Kyle, CPA, CFE
Legislative Auditor

SRT:EFS:RCL:ss

[DOI02]

Appendix A

Management's Corrective Action Plans and Responses to the Findings and Recommendations



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

P.O. Box 911
BATON ROUGE, LOUISIANA 70821-0911
TEL: (225) 342-5423
FAX: (225) 342-8622
<http://www.lti.state.la.us>

Daniel G. Kyle, Ph.D., CPA, CFE
Office of the Legislative Auditor
State of Louisiana
1600 North Third Street
Baton Rouge, LA 70802

November 22, 2002

Dear Dr. Kyle:

This letter shall serve as the Department of Insurance's official response to your letter dated November 8, 2002 regarding your audit findings alleging Unauthorized Services Provided to Suspended Commissioner.

On February 27, 2002 your office released an audit finding which included a report entitled Unauthorized Legal Services Provided to Suspended Commissioner. That report is the same allegation you are asking us to respond to now. As I already addressed this issue some 10 months ago, once again please see the enclosed letter (See Attachment A) I sent to you on January 23, 2002, which served as the Department's official response to this allegation then and still remains unchanged.

Additionally, on January 23, 2002, I asked Attorney General Richard Ieyoub for an opinion relative to this issue (See Attachment B). The Attorney General's response letter of March 7, 2002, which we feel corroborates the Department's position in this matter, was given to a member of your staff soon after I received it. However, I am attaching another copy of this letter for your review (See Attachment C).

Your only other concern is Commissioner Brown's use of the Department's Plaza Hearing Room for two press conferences following his suspension. My office felt it was fitting for Commissioner Brown to conduct these two press conferences at the Department of Insurance because of the significant impact the situation had on our office and the industry we regulate. Three Department employees, which included two student workers and one unclassified employee, spent a combined total of 15 minutes moving chairs in the Plaza Hearing Room to prepare for the second press conference. The first press conference was held on a Sunday and two unclassified employees volunteered their time to set up the room for that day.

You stated in your November 8, 2002 letter to my office that the Department could have exposed the state to potential liability by not requiring proof of insurance from Commissioner Brown for the press conferences and that we should have charged for use of the facilities since Commissioner Brown was conducting personal business on state property. As you can once again read in my letter to you dated November 7, 2002 (See Attachment D), no member of my staff has ever heard of a law or policy stating that prior approval must be received for a member of the public to use a state owned building. And, an inquiry with one of your staff members, along with several employees at the Division of Administration and Office of State Buildings, including the Superintendent of the Office of State Buildings and the General Counsel of the Division of Administration, also failed to yield any such law or policy to this effect.

My staff and I have concluded that the inability by several parties to find a law or policy in Louisiana that would require prior approval for a private citizen to use a state owned building means there is no such law or policy. However, I once again urge you to please provide my office with this information, if you have it, so that I might ensure future compliance. Also, if you are aware of what the monetary charge should be for the use of a public building by a private citizen, I would also appreciate having this information so that the Department of Insurance can establish a procedure for the use of our facilities in the future.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Robert Wooley', with a long, sweeping horizontal line extending to the right.

J. Robert Wooley
Acting Commissioner of Insurance

JRW/aww
attachments



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

01/23/2002 PM 3:42

January 23, 2002

P.O. Box 911
BATON ROUGE, LOUISIANA 70821-0911
TEL: (225) 342-5423
FAX: (225) 342-8622
<http://www.lci.state.la.us>

Dr. Daniel G. Kyle
Legislative Auditor
State of Louisiana
P. O. Box 94397
Baton Rouge, LA 70804-9397

Dear Dr. Kyle,

This is in response to the finding of your office in connection with the alleged unauthorized legal services provided to the suspended Commissioner of Insurance. First, let me state that I disagree with the finding which I believe was based on an erroneous interpretation of Louisiana Revised Statute 42:1411 pertaining to suspended public officials.

As you know, the provision of law that gives rise to this issue is Louisiana Revised Statute 13:3667.3 pertaining to statewide elected officials and appointed heads of state departments in connection with their compelled appearance in court. To accept the position of your office relative to Louisiana Revised Statute 13:3667.3 as to the providing of legal services to a suspended public official would impose a more onerous burden on a suspended public official than that which is applied to a convicted public official who is removed from office as those individuals are entitled to such legal services notwithstanding their conviction.

Additionally, the Attorney General has previously issued Opinion No. 93-306 dated August 31, 1993 wherein he stated that Louisiana Revised Statute 42:1411 could not be used to terminate the health insurance benefits of a suspended public officials when such suspension would constitute a termination of those benefits as in the case where a public official had a health condition that would constitute a permanent penalty for him should his conviction be overturned on appeal. Similarly the suspended Commissioner of Insurance would suffer a permanent injury under the interpretation of Louisiana Revised Statute 42:1411 under the position taken your office in this matter as the harm that could come to him and/or the state as a result of the denial of the benefits provided under Louisiana Revised Statute 13:3667.3 could not be reversed should his appeal result in the overturning of his conviction.

Finally, the state has a significant interest in providing the legal services in question as the state will ultimately pay any damages that are found to have been caused by the negligence of a convicted, retired or deceased public official. It is for that reason that the Office of Risk Management chose to provide the same legal services to the suspended Commissioner of Insurance in the matter entitled "James H. "Jim"

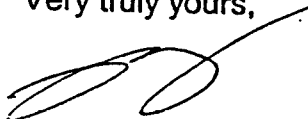
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January 23, 2002
Dr. Daniel G. Kyle

Brown, as Commissioner of Insurance for the State of Louisiana vs. American National Agents Insurance Group, a Louisiana Partnership". In fact, the Louisiana Receivership Office of the Department of Insurance provided the representation of the suspended Commissioner of Insurance in the litigation arising out of the liquidation of Physicians National Risk Retention Group in order to protect the assets of the estate they are entrusted with as opposed to the alleged protection of the suspended Commissioner of Insurance.

In light of our disagreement with the interpretation of your office relative to Louisiana Revised Statute 13:3667.3 and Louisiana Revised Statute 42:1411 I have requested an opinion of the Attorney General to resolve the issue raised by your office and I will advise you immediately upon my receipt of said Attorney General's opinion.

Very truly yours,



J. Robert Wooley
Acting Commissioner of Insurance

JRW/sb



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

P.O. Box 911
BATON ROUGE, LOUISIANA 70821-0911
TEL: (225) 342-5423
FAX: (225) 342-8622
<http://www.lci.state.la.us>

January 23, 2002

Hon. Richard P. Ieyoub
Attorney General
State of Louisiana
Post Office Box 94005
Baton Rouge, Louisiana 70804-9005

Dear General Ieyoub,

I am writing to request an opinion of your office relative to an issue presented to me by the Office of the Legislative Auditor in connection with Louisiana Revised Statute 42:1411. As you know, that statute provides in pertinent part that a suspended public official should not receive any compensation, pay, allowance, emolument, or privilege of his office during his suspension. As you also know, Louisiana Revised Statute 13:3667.3 provides that statewide elected officials and appointed heads of state departments shall be entitled to protection from being compelled to give testimony in court within four years after the last day such person held such position if the court action arises out of or is in connection with duties the person exercised as such an official.

The Legislative Auditor has recently taken the position that Louisiana Revised Statute 42:1411 precludes the state from asserting the provisions of Louisiana Revised Statute 13:3667.3 on behalf of the suspended Commissioner of Insurance and I would appreciate your resolving that conflict. Be aware that the issue was presented to me as a result of litigation arising out of the liquidation of Physicians National Risk Retention Group but is also present in a matter presently pending in the 19th Judicial District Court captioned "James H. "Jim" Brown, as Commissioner of Insurance for the State of Louisiana vs. American National Agents Insurance Group, a Louisiana Partnership" wherein the suspended Commissioner of Insurance is being represented through the Office of Risk Management in order to protect the interests of the state.

When considering this request I would refer you to your Opinion No. 93-306 dated August 31, 1993 that was based upon the permanent nature of the suspension of health care benefits available to a public official who has a health condition that would render the suspension of his benefit a permanent penalty. Similarly, the suspension of the protections of Louisiana Revised Statute 13:3667.3 for a statewide elected official

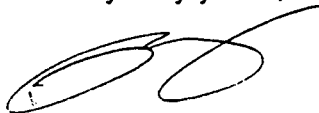
Page two

January 23, 2002
Hon. Richard P. Ieyoub

or appointed head of a state department would constitute a permanent penalty as the negative results of such a suspension are irreversible. I also believe that the intent of Louisiana Revised Statute 13:3667.3 was to protect the interests of the state as the negative implications of not providing that protection can have significant financial implications for the state treasury.

If you have any questions concerning this request or wish to discuss it with me, please feel free to contact me at the above office.

Very truly yours,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

J. Robert Wooley
Acting Commissioner of Insurance

JJD/sb



RICHARD P. IEYOUB
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

70804-9005

March 7, 2002

P.O. Box 94005
TEL: (504) 342-7013
FAX: (504) 342-7335

Mr. J. Robert Wooley
Acting Commissioner of Insurance
P. O. Box 911
Baton Rouge, LA 70821-0911

Dear Mr. Wooley:

This is in reference to your letter of January 23, 2002, in which you request an opinion of the Attorney General's Office concerning whether the elected Commissioner of Insurance, who is currently suspended from that position pursuant to R.S. 42:1411, may avail himself of the exemption from being compelled to appear in a civil case, as provided by R.S. 13:3667.

In your letter you mention two pending civil matters in which this question may come before the courts. The Attorney General's policy regarding written legal opinions provides, in part as follows: "The Attorney General will not furnish opinions on questions scheduled for determination by the courts, or where the prospect of litigation appears imminent".

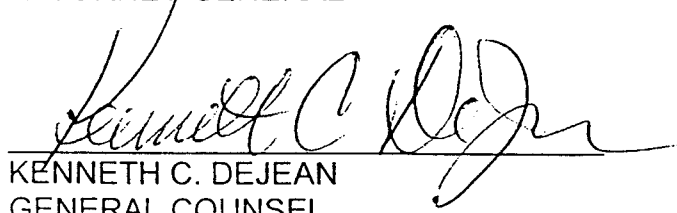
We are informed that in the pending litigation entitled "James H. "Jim" Brown as Commissioner of Insurance for the State of Louisiana vs. American National Agents Insurance Group, et al.", Number 388,758, Division D, 19th JDC, Parish of East Baton Rouge" pleadings have been filed by Special Assistant Attorneys General seeking to quash subpoenas for non-compliance with R.S. 13:3667. This office endorses and fully supports the arguments of its special counsel in that litigation and we believe that it represents an accurate analysis of Section 3667 and the immunity provided for therein.

Because of the policy, and the facts which you have provided to us, we regret that we are unable to render an opinion pursuant to your request, but we believe that the above statement is responsive to your inquiry.

Very truly yours,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:


KENNETH C. DEJEAN
GENERAL COUNSEL

KCD:ams



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

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Daniel G. Kyle, Ph.D., CPA, CFE
Office of the Legislative Auditor
State of Louisiana
1600 North Third Street
Baton Rouge, LA 70802

November 7, 2002

Dear Dr. Kyle:

This letter shall serve as the Department of Insurance's preliminary response to two recent audit inquiries by your office.

Your first concern was Commissioner Brown's use of the Department's Plaza Hearing Room for two press conferences. No member of my staff has ever heard of a law or policy stating that prior approval must be received for a member of the public to use a state owned building. An inquiry with a member of your staff also failed to yield an answer. So for the past two weeks, several members of my staff spoke with employees at the Division of Administration and the Office of State Buildings in an attempt to find the correct statute or policy.

My staff finally contacted William Wilson, Superintendent of the Office of State Buildings, when all other attempts to locate this information failed. Mr. Wilson stated that he was not aware of such a law or policy, and referred the matter to Pam Perkins, General Counsel with the Division of Administration. Ms. Perkins researched the issue and could not find a law or policy that would make it necessary for this Department or any other state agency to obtain permission from the Division of Administration, Office of State Buildings, when a member of the public seeks to use a state owned building. Based on Ms. Perkins' unsuccessful research and the failed efforts of my staff to locate this information, I ask that your office provide me with any information you may have on this subject to ensure future compliance by my staff.

Your final inquiry sought management at the Department of Insurance to sign a questionnaire provided by one of your staff members, confirming that our office was not aware of any dishonest acts committed by our employees, as defined in the Insurance Information Notice No. 2002-2. When acting Executive Counsel Jim Donelon signed the questionnaire, attesting that the Department of Insurance had no knowledge of dishonest acts on the part of our employees, your office cited the allegations of dishonest acts on behalf of four Department of Insurance employees, as found in your investigative audit dated September 18, 2002.

The questionnaire signed by Mr. Donelon was dated September 24, 2002, six days after the release of your investigative audit. Because your findings in the investigative audit were already addressed by the Department, and in our view, already resolved, and because this information was already made known to the public, as articles on the subject appeared in the Advocate and The Times-Picayune, the Department understood the questionnaire to refer to other alleged dishonest acts, not including the allegations contained in the investigative audit.

Also, if you read the section in the Insurance Information Notice No. 2002-2; Subject: State Employee Faithful Performance Blanket Bond Exclusion, employee dishonesty is defined in the policies as any dishonest acts committed by an employee acting alone or in collusion with other persons, with the manifest intent to:

- (1) Cause you to sustain loss; and also
- (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: *salaries*, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
 - (a) The "employee"; or
 - (b) Any person or organization intended by the "employee" that receive that benefit.

The Department of Insurance understands this section of the Insurance Information Notice to read that a dishonest act would not include any allegation of payroll fraud, which is what your office is claiming in the investigative audit dated September 18, 2002.

Should your office have any further questions, please do not hesitate to contact Patti Kling, the Department's Fiscal Officer, at 342-1489.

Sincerely,



J. Robert Wooley
Acting Commissioner of Insurance

JRW/aww



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

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Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
State of Louisiana
1600 North Third Street
Baton Rouge, LA 70802

December 2, 2002

Dear Dr. Kyle:

This letter shall serve as the Department of Insurance's official response to your letter dated November 22, 2002 regarding your audit finding alleging improper contracting with former employees.

As per your recommendation, management at the Department of Insurance will formally address this issue with the Louisiana State Board of Ethics. Our office will keep you informed of our progress with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Robert Wooley", is written over a horizontal line.

J. Robert Wooley
Acting Commissioner of Insurance

JRW/aww



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

November 26, 2002

P.O. Box 94214
BATON ROUGE, LOUISIANA 70804-9214
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<http://www.idi.state.la.us>

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

Dear Dr. Kyle:

In response to your audit finding entitled "Lack of Control Over Payroll Records", we have reviewed the finding and the Department concurs with the finding and recommendations made by your office. In addition, we offer the following comments outlining changes in our payroll procedures.

Effective September 4, 2002, our Deputy Commissioner of Management and Finance and our Human Resources Director enacted several measures to ensure complete compliance with the policies and procedures regarding time and attendance records of this Department. Specifically, these actions were implemented to ensure that the required approval signatures are acquired on respective timesheets. An additional employee in the Human Resources Division has assumed an equal share of payroll duties with the other employee previously designated for these duties. Greater emphasis will be placed on the existing payroll and auditing deadlines. Immediately following these deadlines, a thorough review and audit of each timesheet will be conducted to identify any documents that do not appear to be completed in compliance with Departmental policies and procedures.

On September 24, 2002, a meeting was held with all Deputy Commissioners, Assistant Commissioners and supervisors to discuss the importance of this Department's time and attendance policies. Every supervisor was directed to review these policies with their employees. Furthermore, I issued a memorandum on September 25, 2002, to all employees specifically noting that any future failures to comply with these policies would result in disciplinary proceedings including termination of employment. All employees were required to sign a copy of this memorandum to acknowledge its receipt.

Finally, my office is committed to enforcing the policies and procedures of this Department, with no exceptions. Please call me at 342-5423 if you have any questions or would like to discuss our response and/or corrective actions.

Very truly yours,

J. Robert Wooley
Acting Commissioner of Insurance



OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

November 20, 2002

P.O. Box 94214
BATON ROUGE, LOUISIANA 70804-9214
PHONE (225) 342-5900
FAX (225) 342-3078
<http://www.lci.state.la.us>

Dr. Daniel G. Kyle, CPA, CFE
Legislative Auditor
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Response to Audit Finding
"Insufficient Information Technology Policies"

Dear Dr. Kyle:

The Department of Insurance concurs in part with the finding regarding "Insufficient Information Technology Policies" and offers the following response:

Although the Department's disaster recovery/business continuity plan is outdated, the basis of the plan is still valid. The Department has recently completed a conversion process to remove all old (outdated) servers in anticipation of the move to the Julian Poydras Building. Updates to the current plan have been delayed due to the upcoming move, which will require that the plan be completely rewritten once in the new building.

Additionally, the Department has detailed backup and recovery procedures for all mission-critical servers. The Department has submitted a RFP to the Office of Contractual Review to address network monitoring, system security, and the development and maintenance of a disaster recovery plan. The disaster recovery plan will include provisions to keep back-up media in an offsite processing facility not in close proximity to the Julian Poydras Building. The Department will store back-up media at the Louisiana Receivership Office on Florida Boulevard until the RFP is awarded and the disaster recovery plan is implemented.

The Department routinely purges email that is older than 90 days and maintains annual backups for three years. The Department feels it is the employee's responsibility to determine which emails have administrative value and should be retained. Once the value of the email is determined, the employee is responsible for retaining the email either in paper or electronic (archive) format.

Please call me at 342-5423 if you have any questions or would like to discuss our responses and/or corrective actions.

Sincerely,

J. Robert Wooley
Acting Commissioner of Insurance

JRW/CMB/sck

Attachment

c: Chad Brown, Deputy Commissioner of Management and Finance
Greta Sommers, Assistant Commissioner of Management and Finance
Patti Kling, Fiscal Officer